

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6235 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

DINESH RAMCHHODBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6235 of 2001
MS JAYSHREE C BHATT for Petitioner No. 1
MR VM PANCHOLI APP for Respondent No. 1
MR BN KESHWANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 27/07/2004

ORAL JUDGEMENT

1. By filing instant petition under Section 482 of

the Code of Criminal Procedure ('the Code' for short), the petitioner against whom charge-sheet is filed and is facing trial in Sessions Case No. 238 of 1995 for commission of alleged offence under section 489 read with Section 114 of the Indian Penal Code has prayed to quash and set aside the order dated 19.9.1998 passed below Ex.54 in Sessions Case No. 238 of 1995, by the learned Additional Sessions Judge, Mehsana, by which the application Ex.54 filed by the petitioner seeking discharge from the prosecution came to be rejected and therefore it is prayed that it be declared that the petitioner herein is discharged of the offences and consequently he be set at liberty in all respects.

2. An offence vide CR No.385/94 came to be registered with Kadi Police station for commission of the alleged offences under section 489 of IPC read with Section 114 of IPC on the basis of the information supplied by Ashwinkumar Ambalal Upadhyaya, Assistant Bank Manager, Punjab National Bank, Kadi Branch, respondent No.2 herein. On the basis of the said FIR, investigation was done and during the course of investigation, evidence was divulged against the present petitioner and other co-accused and therefore charge-sheet came to be filed against him as well as other co-accused. Since the offence under Section 489 of IPC is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court, Mehsana. The petitioner and other co-accused, therefore, filed application Ex.54 before the learned Additional Sessions Judge, Mehsana seeking discharge from the prosecution on the ground that they have been booked and the charge-sheet has been filed only on the basis of the statement of co-accused. The learned Additional Sessions Judge, Mehsana after hearing the parties, came to the conclusion that from the statements of Kamlesh Manikant Vaishnav and Bhikhabhai Chunilal Patel recorded by the police during the course of investigation, names of almost all the accused persons of the CR No.I-385/94 and the petitioner are revealed. The learned Additional Sessions Judge has also noted that the accused persons were also arrested by Sherkotada Police Station, Ahmedabad in connection with CR No.I-356/94 for similar offences under sections 489 and 120-B of IPC which gives rise to sufficient prima facie circumstantial evidence that the petitioner and other accused were dealing in counterfeit currency notes and as a result thereof rejected the application filed by the petitioner seeking discharge from the prosecution, which has given rise to the present petition.

3. Ms. Jayshree Bhatt, learned advocate of the petitioner, contended that the petitioner has been booked and charge-sheet has been filed against him only on the basis of the statement of the co-accused. She also contended that other similarly situated persons had filed Criminal Revision Application No. 605 of 1998 before this Court and by order dated 6.5.1999 this Court has discharged those persons from prosecution and charge-sheet filed against them came to be quashed. She therefore claimed that on the ground of parity also the petitioner is also required to be given similar treatment.

4. I have heard Ms. Jayshree Bhatt, learned advocate of the petitioner and Mr. VM Pancholi, learned APP for respondent No.1 - State of Gujarat. I have also gone through the averments made in the petition and the order dated 19.9.1998 passed by the learned Additional Sessions Judge, Mehsana below application Ex.54 in Sessions Case No. 238 of 1995 by which the application filed by the petitioner for discharging him from prosecution came to be rejected.

5. There is no manner of doubt that the petitioner herein has filed discharge application and the said application came to be rejected by the learned Additional Sessions Judge, Mehsana. It may be appreciated that the present petitioner is facing trial in connection with commission of offence under section 489 of IPC. Dealing in counterfeit currency notes which breaks the economy of the country is a serious offence. Such offenders cannot be dealt with leniently at pretrial stage irrespective of the fact whether the offender is booked on the basis of the statement of co-accused.

6. In Babua alias Tazmul Hossain v. State of Orissa and others, 2001 AIR SCW 682, the Supreme Court has observed that even if contraband articles are not recovered from the accused and he has been booked and arrested on the basis of the statement of co-accused, he is not entitled to bail at pretrial stage. Applying the principles laid down by the Supreme court in the aforesaid judgment to the facts of the present case, at the cost of repetition, be it stated that dealing in counterfeit currency notes which breaks the economy of the country is a serious offence and therefore such an offender cannot be dealt with leniently at pretrial stage. Besides this, the learned trial Judge has also observed that the petitioner has been arrested in connection with CR No.I-356 of 1994 registered with Sherkotada Police Station, Ahmedabad for commission of

alleged offence under sections 489 and 120B of IPC. Therefore, it can be concluded that the petitioner is a habitual offender dealing in counterfeit notes and therefore powers under section 482 of the Code which is discretionary and plenary cannot be exercised in favour of such a person.

7. Besides this, during the course of trial, evidence of the investigating officer as well as Panch witnesses will also be recorded and considered which will play vital role and therefore it is premature to come to the conclusion that the petitioner would be acquitted of the offence merely because of the fact that he has been booked on the basis of the statement of co-accused.

8. Seen in the above context, at present, it can be concluded that there is a prima facie case against the petitioner for commission of alleged offence under Section 489 of IPC and therefore the prayer made in this petition cannot be granted in exercise of powers under section 482 of the Code. Hence, I find no merit in this petition and the petition deserves to be rejected.

9. For the foregoing reasons, the petition fails and is accordingly rejected. Rule is discharged. Interim relief granted earlier stands vacated.

(A.M. Kapadia, J.)

(karan)